IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.12.2005
CORAM
THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN
W.P.No. 37580 of 2004

1. Perichiappa Gounder
2. Kumarasamy
3. Maruchamy Gounder
4. A. Natarajan
5. Ramasamy Gounder
6. Marathal
7. Ganesh
8. Radha mani ..Petitioners

Vs.

1. The State of Tamil Nadu
rep.by its Secretary,
Housing and Urban Development,
Fort St. George, Chennai -9.

2. The Tamil Nadu Housing Board,
rep. by its Managing Director,
No.331, Anna Salai, Nandanam,
Chennai - 35.

3. The Special Tahsildar (Land Acquisition),
Housing Scheme Unit-II,
Coimbatore - 641 018. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India for issuance of the Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent in letter No.37215/LA III-2/2001-13 dated 24.8.2004, quash the same and directing the first respondent to reconvey the lands an extent of 0.74.0 in S.F. No.838/5, an extent of 0.21.0, 0.30.0, 0.19.5, 0.32.0, 0.18.0, 0.25.5 in S.F. Nos.849/1B,2B,1C, 2C, 1D, 2D respectively, an extent of 0.01.0, 0.09.5, 0.22.0, 0.13.5, 0.15.0 in S.F. Nos.850/2C. 2D, 2E, 2F, 2G respectively, the lands in S.F. No. 850/3 and an extent of 0.76.0 hectares of land in S.No. 839/2C situated in Kalapatti Village, Coimbatore North Taluk, Coimbatore District.

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For Petitioners :: Mr.R.N. Amarnath
For Respondents ::Mr.R.Muthukumaraswamy, Addl. Advocate General for Mr.D. Veerasekaran for R2 & R3
Mrs.Rani Selvam, GA for R1

O R D E R

Under the impugned order, the Government has rejected the petitioner's claim for reconveyance under Section 48-B of the Land Acquisition Act as amended by the State of Tamil Nadu. Mr.R.N.Amarnath, learned counsel appearing for the petitioner would attack the order on the following grounds:

> "The property acquired and transferred to the Housing Board remains unutilised for a long number of years and therefore it must be held that the public purpose for which the lands were acquired no longer subsists. If that is so, the land owners have a right to have the lands reconveyed. When the lands, which were acquired is not used for the purpose for which it was acquired, then the Government has a right of forfeiture under Section 16-B of the Land Acquisition Act as amended by the State of Tamil Nadu. Therefore reading Sections 16-B and Section 48-B of the Land Acquisition Act (both amended by the State of Tamil Nadu) this Court has to necessarily hold, on the facts available in the order impugned, that the land owners are entitled to reconveyance."

Mr.R.Muthukumaraswamy, learned Additional Advocate General appearing for the respondents would submit that the Government will get jurisdiction to exercise the power under Section 48-B of the Land Acquisition Act only when the land in respect of which, it has to exercise the power, vests with the Government and secondly it must be satisfied that the land is not required for the purpose for which it was acquired. In this case, according to the learned Additional Advocate General and it is an admitted fact, that the land vests with the Housing Board. It is a statutory vesting under Section 17-A of the Land Acquisition Act as amended by the State of Tamil Nadu. Once such vesting is there, then the land so vested with the Housing Board is governed by the provisions of the

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Tamil Nadu Housing Board Act, which is a self contained Act defining the powers of the Housing Board to deal with the property so vesting with them. Learned Additional Advocate General would submit that under Section 16-B of the Act, power is available to the Government to forfeit when it finds that the land acquired is not used for the purpose for which it was acquired and assuming that the Government can exercise that power – which is not available in this case – then such an exercise of power will result in the lands vesting in the Revenue Department and not on the land owners. Learned Additional Advocate General brings to my notice a judgment of the Supreme Court reported in 2004 (5) C.T.C. 506 (GOVERNMENT OF ANDHRA PRADESH v. SYED AKBAR) to contend that the Government is at liberty to use the land for any other public purpose other than the public purpose for which it was originally acquired.

2. Having regard to the submissions made by the learned counsel for the petitioner and the learned Additional Advocate General, I went through the relevant provisions of law. Before that, I want to apply my mind to the order challenged in this writ petition. The order shows that the lands acquired have been transferred to the Housing Board; there is an approved lay out in D.T. And C.P vide proceeding in ref.No.313 of 1999; the lands are in possession of the Housing Board and on account of several litigations filed by the land owners before this court, the Scheme could not be implemented and that in the order, the scheme is going to be implemented. Therefore there is no question of forfeiture. In a case governed by statutory vesting under Section 17-A of the Land Acquisition Act, as amended by the State of Tamil Nadu, it is needless to state that there is no vesting with the Government. There cannot be vesting at the same time on two persons. It is no doubt true that once the land is acquired, the initial vesting is with the Government under Section 16 of the Land Acquisition Act. But once the Housing Board pays the land price, then under Section 17-A of the Land Acquisition Act, the land stands transferred to the Housing Board and on such transfer the vesting is with the Housing Board. Once the statutory vesting takes place with the Housing Board, then the Housing Board, which is governed by the provisions of the Tamil Nadu Housing Board Act, a self contained Act, has to deal with such property only in accordance with the provisions of the said Act. That Act itself contains as to how the property so acquired; transferred and vesting with them shall be dealt with. Therefore it is clear to my mind that once the lands acquired were transferred and vested with the Housing

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Board, then the Tamil Nadu Housing Board Act alone would govern the dealing of the property in question and all rights and liabilities arising out of that land have to be necessarily tested only with the provisions of the said Act alone and not under the provisions of any other Act.

3. Since vesting of the land already with the Housing Board had taken place and the condition precedent to exercise the power under Section 48-B of the Land Acquisition Act is that the land must continue to vest with the Government, then in the absence of such vesting, the Government cannot exercise the power under Section 48-B of the Land Acquisition Act. Once a statutory vesting takes place under Section 17-A of the Land Acquisition Act, the property has to be dealt with under the provisions of the Tamil Nadu Housing Board Act and unless there is an enabling provision, either in the Land Acquisition Act itself or in the Tamil Nadu Housing Board Act, then such vesting with the Tamil Nadu Housing Board cannot be divested by an order of court and consequently revesting in the Government shall not take place.

4. As far as Section 16-B of the Land Acquisition Act is concerned, I have again no doubt at all that the argument advanced by the learned counsel for the petitioner do not deserve acceptance. The right to forfeit is exclusively available to the Government and it is they who can exercise that power, if they find that the land acquired is not used for the public purpose for which it was acquired. The objects and reasons for introducing Section 16-B of the Land Acquisition Act is seen from the Tamil Nadu Amending Act 16 of 1997 and one of the objects reads as follows:-

> "Lands are acquired by Government on behalf of several requisitioning bodies. But after acquisition the requisitioning bodies transfer the lands to others without the prior permission of Government. With a view to avoid the requisitioning body from transferring the acquired lands or any part thereof by sales, mortgage, gift, etc. without the prior permission of the Government it has become necessary to make a provision in the Act. In certain cases the requisitioning body does not use the land acquired for them. Similarly, the land is not put to use for the purposes for which it was originally acquired and they may keep the land idle for years together without utilising the land. To prohibit this tendency it has been decided to insert a new provision as Section 16-B in the Act, so as to

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provide that such land may be forfeited and the land shall vest in the Government in Revenue Department."

Therefore it is clear from the above object that the Government wanted to avoid arbitrary exercise of power by the requisitioning body in dealing with the property transferred to them on their own, without even a reference to the Government. In other words, there was no control over the requisitioning body in dealing with the property so transferred to them after the acquisition. Only to avoid this mischief, section 16-B was inserted. But that is not the case here, since admittedly, after vesting with the Housing Board, they cannot deal with the property in any manner as they like, but it is subject to the provisions of the Tamil Nadu Housing Board Act itself. I have already stated that the Tamil Nadu Housing Board Act is a self contained Act and therefore it gives no room at all to fall back upon any other provisions of law in dealing with the property vesting with them. The contention of the learned Additional Advocate General that the Government can invoke the power of forfeiture available under section 16-B of the Land Acquisition Act only when there is no control over the requisitioning body in dealing with the property transferred to them, deserves acceptance. The objects and reasons referred to earlier behind introducing section 16-B of the Land Acquisition Act gives a clear support to the argument advanced by the learned Additional Advocate General.

5. Learned counsel appearing for the petitioner brought to my notice an unreported judgment dated 20.7.1999 in W.P.No.4600 of 1999 of this court to contend that the land owners have a right to have their lands reconveyed, once if it is found that the public purpose for which it was originally acquired is not subsisting any more and that on the day when the request for retransfer was made, the public purpose must be subsisting. Learned counsel also relied upon an unreported judgment dated 16.10.2003 in W.P.No.6308 of 2003 of this court between the same parties wherein a learned Judge of this court had given a direction to the Government to consider whether any action is required to be taken under Section 16-B of the Land Acquisition Act and depending upon the out come of such decision, whether reconveyance as contemplated under Section 48-B of the Land Acquisition Act is called for. With greatest respect to the learned Judges, who dealt with the two cases relied upon by the learned counsel, I find that the impact of Section 17-A of the Land Acquisition

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Act, as amended by the State of Tamil Nadu, and the provisions of the Tamil Nadu Housing Board Act had not been taken into account in disposing of those two cases. Learned counsel appearing for the petitioner is not in a position to show any provision of law either in the Tamil Nadu Housing Board Act itself or in the Land Acquisition Act prescribing an outer limit of period before which the land acquired for a public purpose should be utilised for such public purpose, failing which, the entire proceedings would stand reversed in favour of the land owner. In the absence of such a provision, it is not possible for this court to fix a period on it's own stating that, before the expiry of that period if the lands acquired for a public purpose had not been utilised, then the entire proceedings would stand reversed. If that is encouraged, then every court would fix, in a given situation, an outer period of it's own leading to several anomalies. There is yet another judgment relied upon by the learned counsel for the petitioner reported in 2005(3) C.T.C. 145 (PRITHVI TRUST PRIVATE LTD. V. THE STATE OF TAMIL NADU) where a learned Judge of this court had given liberty to the petitioner therein to make a representation to the Government to exercise the power under Section 16-B of the Land Acquisition Act which empowers to forfeit the lands which remain vested with the Housing Board but not used for the purpose. Once again I have to state with respect that section 17-A of the Land Acquisition Act and the provisions of the Tamil Nadu Housing Board Act have not been brought to the notice of the learned Judge when the learned Judge was of the opinion as indicated above. As rightly contended by the learned Additional Advocate General, the power under Section 16-B of the Land Acquisition Act would be available only when there is no statutory vesting in another Statutory Authority. In other words, on such acquisition, if the Government transfers the property to any other person including individuals or other department, to be used for their public purpose and if they do not use it for their public purpose then the Government exercising their power of forfeiture can call back the lands to vest with the Revenue Department so that they can use the lands for other public purpose. As already stated by me, once the statutory vesting takes place with the Housing Board under Section 17-A of the Land Acquisition Act, then unless there is an enabling specific provision either in the Land Acquisition Act or in the Tamil Nadu Housing Board Act, for the Government to forfeit the lands if the lands are not used for public purpose, then such a power cannot be exercised at all. My reading of section 16-B of the Land Acquisition Act will not enable the Government to divest

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the Statutory vesting that had already taken place in favour of the Tamil Nadu Housing Board. As referred to earlier, the Tamil Nadu Housing Board Act itself contains a provision to sell the property vesting with them in open auction (see section 72), if it is of the opinion that the land is not required for the purpose for which it was acquired and transferred to them. That Statutory power available to the Housing Board cannot be interfered with by exercising the power available under section 16-B of the Land Acquisition Act. There is no provision in the Tamil Nadu Housing Board Act which would enable the Government to forfeit the vesting already done in the Housing Board and recall the lands. There is also no provision in the Land Acquisition Act to interfere with such statutory vesting with the Housing Board. Even otherwise, I find that a Mandamus cannot be issued to compel the Government to exercise the right of forfeiture when as on date, the petitioner has no subsisting interest in the land.

6. For all the reasons stated above, I do not find any ground made out to interfere with the order under challenge and accordingly, the writ petition is dismissed. No costs. Connected W.P.M.P is closed.

Tr/-

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   Housing and Urban Development,
   Fort St. George, Chennai -9.

2. The Managing Director,
   The Tamil Nadu Housing Board,
   No.331, Anna Salai, Nandanam,
   Chennai - 35.

3. The Special Tahsildar (Land Acquisition),
   Housing Scheme Unit-II, Coimbatore - 641 018.

+ one cc to Mr. R.N. Amarnath, Advocate sr no. 141
+ one cc to Mr. D. Veerasekaran, Advocate sr no. 88
+ one cc to the Spl. Govt. Pleader, High Court, Madras sr no. 26

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